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February 21, 2012

Karl Morell
Of Counsel
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BY HAND DELIVERY

Cynthia Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

FEB 21 2012

Re: STB Docket No. AB 6 (Sub-No. 479X), BNSF Railway
Company -- Abandonment Exemption -- In Page and Fremont
Counties, Iowa

Dear Ms. Brown:

Attached for filing are the original and ten copies of a Petition for
Exemption under 49 U.S.C. § 10502. Also attached is a check
covering the \$6,300 filing fee.

Please time and date stamp the extra copy of the Petition and
return it with our messenger.

If you have any questions, please call me.

Sincerely,

Karl Morell
Of Counsel

ENTERED
Office of Proceedings

FEB 21 2012

Part of
Public Record

Enclosures

FEE RECEIVED

FEB 21 2012

TRANSPORTATION BOARD

FILED

FEB 21 2012

**SURFACE
TRANSPORTATION BOARD**

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Portland, Oregon

Bozeman, Oregon

Seattle, Washington

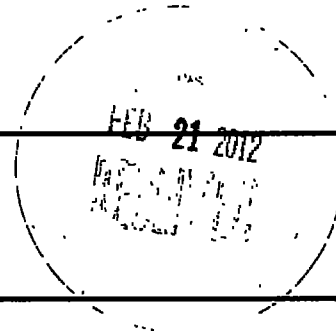
Washington, DC

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

BNSF RAILWAY COMPANY)
ABANDONMENT EXEMPTION)
IN PAGE AND FREMONT COUNTIES,)
IOWA)

DOCKET NO. AB 6
(SUB-NO. 479X)

PETITION FOR EXEMPTION



BNSF RAILWAY COMPANY
2650 Lou Menk Drive
P.O. Box 96157
Fort Worth, TX 76161-0057

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(202) 638-3307

Dated: February 21, 2012

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

21 2012
JUL 21 2012

BNSF RAILWAY COMPANY)	
ABANDONMENT EXEMPTION)	DOCKET NO. AB 6
IN PAGE AND FREMONT COUNTIES,)	(SUB-NO. 479X)
IOWA)	

PETITION FOR EXEMPTION

BNSF Railway Company ("BNSF") petitions the Surface Transportation Board ("STB" or "Board") to exempt, under 49 U.S.C. § 10502, from the prior approval requirements of 49 U.S.C. § 10903, BNSF's abandonment of a 5.95-mile rail line located in Page and Fremont Counties, Iowa.

PROPOSED TRANSACTION

BNSF proposes to abandon its rail line located between Milepost 20.05 in Shenandoah and Milepost 26.0 in Farragut, in Page and Fremont Counties, Iowa (the "Line"). The Line traverses U.S. Postal Service Zip Codes 51601, 51602, 51603, and 51639. A map of the Line is attached as **Exhibit A**.

Based on information in BNSF's possession, the Line does not contain federally granted rights of way. Any documentation in BNSF's possession will be made available to those requesting it. Farragut is the only station on the Line.

STATEMENT OF FACTS

BNSF owns a 5.95-mile rail line between Shenandoah and Farragut in Page and Fremont Counties, Iowa. BNSF intends to exercise the abandonment authority and convert the portion of the Line between Milepost 20.05 and Milepost 21.90 to industry track and sell the industry track to Green Plains Shenandoah LLC ("GPS"), the only customer on the Line. GPS will use the industry tracks to stage trains. *See e.g.*, STB Docket No. AB 55 (Sub-No. 703X), *CSX Transportation, Inc. – Abandonment Exemption – In Chesterfield and Darlington Counties, S.C.* (not printed), served January 19, 2011; STB Docket No. AB 290 (Sub-No. 247X), *Norfolk Southern Railway Company – Abandonment Exemption – In Mecklenburg County, NC* (not printed), served May 21, 2004. GPS supports the abandonment of this Line. There has been no overhead traffic on the Line for many years and no local traffic on the portion of the Line between Milepost 21.90 and Milepost 26.0 since at least 2007. The City of Farragut has expressed an interest in railbanking the remainder of the Line within its city limits.

EXEMPTION REQUESTED

BNSF seeks an exemption under 49 U.S.C. § 10502 from the applicable requirements of 49 U.S.C. § 10903 to permit BNSF to abandon this 5.95-mile rail line.

Under 49 U.S.C. § 10502, the STB must exempt a transaction from regulation when it finds that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either: (a) the transaction is of limited scope; or (b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the STB should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980,

Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the STB's predecessor to use liberally the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). *See also Exemption From Regulation – Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), *vacated and remanded on other grounds, Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. 422, 104th Cong., 1st Sess. 168-69 (1995).

A. The Application of 49 U.S.C. § 10903 Is Not Necessary to Carry Out the Rail Transportation Policy

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expenses associated with the filing of a formal abandonment application, expedite regulatory decisions and reduce regulatory barriers to exit [49 U.S.C. § 10101(2) and (7)]. *See, e.g., Norfolk & W. Ry. Co. – Abandonment Exem. – Cinn., Hamilton County, OH*, 3 S.T.B. 110 (1998); STB Docket No. AB 367 (Sub-No. 2X), *Georgia Central Railroad, L.P. – Abandonment Exemption – In Chatham County, GA* (not printed), served September 17, 1997 (“*Georgia Central*”). By abandoning the Line, BNSF will be able to avoid the significant opportunity costs and out-of-pocket expenses associated with retaining this largely dormant Line. The only active portion (between Milepost 20.05 and

Milepost 21.90) will be converted to industry track and used by GPS to stage trains. Granting the exemption will thus foster sound economic conditions and encourage efficient management. 49 U.S.C. § 10101(5) and (9). *See, e.g.*, STB Docket No. AB 497 (Sub-No. 1X), *Minnesota Northern Railroad, Inc. – Abandonment Exemption – In Red Lake and Polk Counties, MN* (not printed), served November 14, 1997; STB Docket No. AB 318 (Sub-No. 4X), *Louisiana & Delta Railroad, Inc. – Abandonment Exemption – In Lafourche and Assumption Parishes, LA* (not printed), served August 26, 1997.

Other aspects of the rail transportation policy are not adversely affected. For example, competition and the continuation of a sound rail transportation system are not affected as the only customer on the Line. GPS is purchasing the portion of the Line between Milepost 20.05 and Milepost 21.90 after it is converted to industry track. GPS supports the abandonment.

B. This Transaction Is of Limited Scope

In determining whether a proposed transaction is of limited scope, the Board considers a variety of factors, such as the length of the rail line, the number of shippers on the line and the traffic volume. *See, e.g.*, Docket No. AB 6 (Sub No. 349X), *Burlington Northern Railroad Company – Abandonment Exemption – In Greene and Polk Counties, MO* (not printed), served August 27, 1993; Docket No. AB 347 (Sub-No. 1X), *Florida West Coast Railroad Company – Abandonment Exemption – Gilchrist and Levy Counties, FL* (not printed), served January 16, 1992.

The proposed transaction is clearly of limited scope. BNSF is seeking to abandon a 5.95-mile line that traverses rural farmland outside of the city limits of Shenandoah and Farragut. The shortness of the Line and the limited geographic area involved demonstrate the limited scope of the proposed abandonment. *See, e.g.*, Docket No. AB 397 (Sub-No. 3X), *Tulare Valley Railroad*

Company – Abandonment Exemption – In Tulare And Fresno Counties. CA (not printed), served February 9, 1995.

C. This Transaction Will Not Result in an Abuse of Market Power

The last remaining customer on the Line is GPS and it is purchasing the portion of the Line between Milepost 20.05 and Milepost 21.90 after it is converted to industry track. Consequently, GPS will continue to receive rail service as it has in the past. GPS supports the abandonment. Therefore, regulation is not necessary to protect shippers from an abuse of market power. See, e.g., STB Docket No. AB 55 (Sub-No. 576) *CSX Transportation, Inc. – Abandonment Exemption – In Guernsey County, OH* (not printed), served November 22, 1999; STB Docket No. AB 55 (Sub-No. 563X), *CSX Transportation, Inc. – Abandonment Exemption – In Harrison County, WV* (not printed), served September 25, 1998; *Georgia Central*.

ENVIRONMENTAL AND HISTORIC REPORTS

The Environmental Report and the Historic Report containing the information required by 49 C.F.R. §§ 1105.07 and 1105.08 were forwarded to the Board on February 1, 2012.

CERTIFICATES OF SERVICE

The Certificate of Service of the Environmental and Historic Reports is attached to the Petition as **Exhibit B**. The Certificate of Service for this Petition for Exemption is attached as **Exhibit C**.

CERTIFICATE OF PUBLICATION

The Certificate of Publication is attached as **Exhibit D**.

FEDERAL REGISTER NOTICE

A draft Federal Register notice is attached to this Petition as **Exhibit E**.

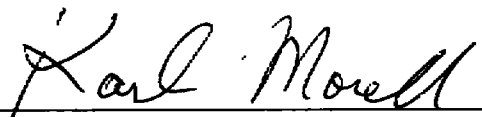
LABOR PROTECTION

The interests of railroad employees who may be adversely affected by the proposed abandonment will be adequately protected by the labor protection conditions in *Oregon Short Line R. Co. – Abandonment – Goshen*, 360 I.C.C. 91 (1979).

CONCLUSION

Application of the regulatory requirements and procedures of 49 U.S.C. § 10903 is not required to carry out the rail transportation policy set forth in 49 U.S.C. § 10101, as previously described in this Petition, nor is STB regulation required to protect shippers from an abuse of market power. Moreover, this abandonment is of limited scope. Accordingly, BNSF respectfully urges the Board to grant this petition.

Respectfully submitted.



Courtney B. Estes
General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131-2828

Karl Morell
Of Counsel
BALL JANIK LLP
Suite 225
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Dated: February 21, 2012

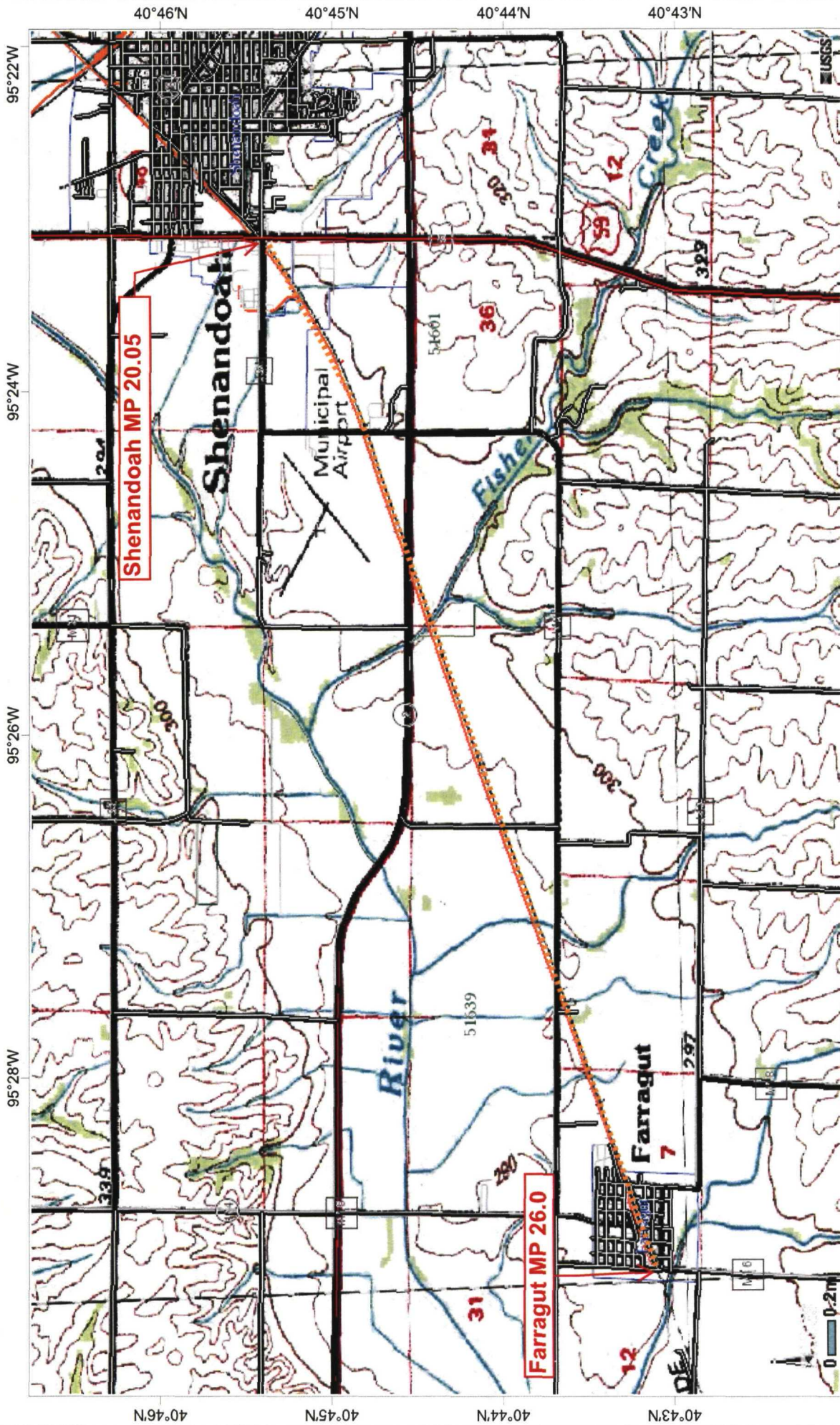


EXHIBIT B
CERTIFICATE OF SERVICE
ENVIRONMENTAL AND HISTORIC REPORTS

The undersigned hereby certifies that, in STB Docket No. AB 6 (Sub-No. 479X), the transmittal letter required by 49 C.F.R. § 1105.11, was mailed to all agencies listed in 49 C.F.R. § 1105.7(b), as well as the additional agencies listed below via first class mail on the 1st day of February, 2012.

The undersigned hereby certifies that a copy of the Environmental and/or Historic Reports in STB Docket No. AB 6 (Sub-No. 479X) for the Shenandoah to Farragut line in Page and Fremont Counties. Iowa was served by first class mail on the 1st day of February, 2012 on the following:

Ms. Victoria Rutson
Chief, Section of Environmental Analysis
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423-0001

City of Farragut
City Hall
518 Hartford Ave
Farragut, Iowa 51639-2047

City of Shenandoah
City Hall
500 W Clarinda Ave
Shenandoah, IA 51601

Fremont County
Planning Commission
506 Filmore St., PO Box 760
Sidney, Iowa 51652-0760

Page County
Zoning and Planning Office
123 W Washington Street
Clarinda, IA 51632

The National Geodetic Survey
Department of Commerce/NOAA
SSMC3
Station 9356
1315 East West Highway
Silver Spring, MD 20910

U.S. Army Engineer District, Rock Island
Clock Tower Building
Rodman Avenue
Rock Island, Illinois 61299

U.S. Department of the Interior
Bureau of Land Management
Northeastern States Field Office
626 E. Wisconsin Ave., Suite 200
Milwaukee, Wisconsin 53202-4617

U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, KS 66101

U.S. Fish and Wildlife Service
Rock Island Field Office
1511 47th Avenue
Moline, IL 61265

Mr. Michael Reynolds, Regional Director
U.S. Department of the Interior
National Park Service
601 Riverfront Drive
Omaha, NE 68102-4226

Mr. Richard Sims, State Conservationist
Iowa NRCS
210 Walnut Street, Room 693
Des Moines, IA 50309

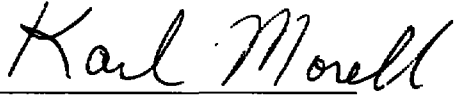
Iowa Department of Natural Resources
Water Supply Section
401 SW 7th Street, Suite M
Des Moines, IA 50309

Iowa Utilities Board
1375 E. Court Avenue, Room 69
Des Moines, Iowa 50319-0069

State Historical Society of Iowa
State of Iowa Historical Building
600 East Locust
Des Moines, Iowa 50319

Iowa Department of Transportation
Office of Rail Transportation
800 Lincoln Way
Ames, IA 50010

Dated this 21st day of February, 2012

A handwritten signature in cursive script that reads "Karl Morell". The signature is written in black ink and is positioned above a horizontal line.

Karl Morell

EXHIBIT C

CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1152.60(d), the undersigned hereby certifies that the Petition for Exemption in STB Docket No. AB 6 (Sub-No. 479X) was mailed via first class mail on February 21, 2012, to the following parties:

State Public Service Commission

Iowa Utilities Board
1375 E. Court Avenue, Room 69
Des Moines, Iowa 50319-0069

Shipper

Michelle Mapes
EVP-General Counsel &
Corporate Secretary
Green Plains Renewable Energy, Inc.
450 Regency Parkway, Suite 400
Omaha, NE 68114

Military Traffic Management Command

MTMC TEA
ATTN: SDTE-SA (Railroads for National Defense)
709 Ward Drive, Building 1990
Scott AFB, IL 62225-5357

National Park Service

Midwest Region
National Park Service
U.S. Department of Interior
601 Riverfront Drive
Omaha, NE 68102-4226

U.S. Department of Agriculture

U.S. Department of Agriculture
Chief of the Forest Service
4th Floor N.W., Yates Building
201 14th Street, SW
Washington, DC 20250

Dated: February 21, 2012

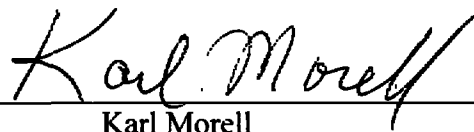
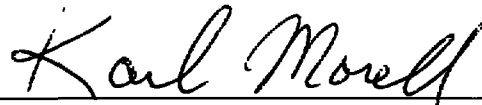

Karl Morell

EXHIBIT D

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed abandonment in STB Docket No. AB 6 (Sub-No. 479X) was published on February 18, 2012, in The Valley News, a newspaper of general circulation in Page and Fremont Counties, Iowa as required by 49 C.F.R. § 1105.12.

Dated: February 21, 2012

A handwritten signature in cursive script that reads "Karl Morell". The signature is written in black ink and is positioned above a horizontal line.

Karl Morell

EXHIBIT E

SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB 6 (Sub-No. 479X)

**BNSF RAILWAY COMPANY
--ABANDONMENT EXEMPTION--
In PAGE AND FREMONT COUNTIES, IOWA**

On February 21, 2012, BNSF Railway Company ("BNSF") filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provision of 49 U.S.C. 10903 for BNSF to abandon a line of railroad extending from railroad milepost 20.05 in Shenandoah to railroad milepost 26.0 in Farragut, in Page and Fremont Counties, Iowa (the "Line"). The Line traverses U.S. Postal Service Zip Codes 51601, 51602, 51603, and 51639. Farragut is the only station on the Line.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interests of railroad employees will be protected by the conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued within 90 days (by _____, 2012).

Any offer of financial assistance under 49 C.F.R. 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1,500. *See* 49 C.F.R. 1002.2(f)(25).

All interested person should be aware that following abandonment of rail service and salvage of the line, a portion of the line may be suitable for other public use, including interim

trail use. Any request for a public use condition under 49 C.F.R. 1152.28 and any request for trail use/rail banking under 49 C.F.R. 1152.29 will be due no later than 20 days after notice of the filing of the petition for exemption is published in the *Federal Register*. Each trail use request must be accompanied by a \$250 filing fee. *See* 49 C.F.R. 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB 6 (Sub-No. 479X) and must be sent to: (1) Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001, and (2) Courtney Estes, BNSF Railway Company, 2500 Lou Menk Drive, AOB-3, Fort Worth, Texas 76131-2828.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment regulations at 49 C.F.R. Part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis at (202) 245-0295 [Assistance for the hearing impaired is available through the Federal Information Relay Service at 1-800-877-8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Office of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Office of Environmental Analysis. EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: _____ 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings